

A

REJOYNDER

TO THE

REPLY

CONCERNING

The PEERAGE and JURISDICTION

OF THE

Lords Spiritual

IN

Parliament, &c.

Proving the Foundation of that Discourse to be Erroneous, and that the Author of those Papers has not made it appear from the Fundamental Laws of the Land, or the Testimony of the most Renowned Authors, and the Practice of all Ages, *That the Lords Spiritual have no Right to vote in Capital Cases.*

Thou that abborrest Idols, dost thou commit Sacrilege? Rom. 2.22.

L O N D O N .

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REPLY

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C O N C E R N I N G

The Peerage and Jurisdiction of the Lords Spiritual in
P A R L I A M E N T , &c.

I Must own my self of the Gentleman's *Opinion* in his *Preface*, that in this petulant Juncture, it is not much to the Reputation of men of Sence, to herd among the Crowd of *Pamphletiers*: And am to assure the *Reader*, that the same Motives and Reasons which made him *write*, made me *reply*. I do no less easily accord with him in the Proposition of a cool and unscurrilous *Reply*; not for fear of the terrible menace of *Dung-Carts* and *Oyster-Boats*, but because, I think *Drollery* unbecoming a *Theme* so grave and sober; and brawling, scurrilous, or unbecoming Language, unmanly, and unargumentative, and only fit for those, who trade with *Billingsgate* Merchants. I wish he had kept close to his own *Golden Rule*, and that he had left out some bitter excursions, which shew there is *Colloquintida* in his gilded *Pills*, which renders his Composition too violent a Purger, to be safely administered to the *Body Politick*: and if while I animadvert upon them, my Pen shall happen to be tinctur'd with those bitter *Ingredients*, as 'tis impossible to touch them without Being a little imbittered, I hope it shall not be charged upon my score who take, but him, who gave occasion of Scandal.

That I may deal fairly by him, and the Purchasers of those Papers, I will give a short *Abstract* of his *Discourse*, omitting nothing that is material, and inserting nothing that is superfluous to his *Design* or my Answer, to swell the Pages with the *Dropsie* of the Pen, a *Disfrase* too incident to Sedentary and Thinking people, who are apt to abound in their own sence.

Pag. 1. He argues thus, If *Bishops* have right of Judicature in *Capital Cases*, then either *Jure Divino*, or *Jure Humano*: Not by the former, granted; Nor, Secondly, by the latter: First; not by *Common Law*: Secondly, not by *Statute Law*. This he endeavours, as he says, to demonstrate; though, I think, he falls something short in his performance, in the subsequent *Discourse*, from these two Propositions, to which he reduces his whole *Scope* and *Design*. 1. That the *Bishops* Voting in *Capital Cases*, is contrary to the true intent and meaning of the 29th. Cap. of *Magna Charta*, That every Freeman shall be judged by his *Peers*. Secondly, That this claim of the *Bishops* is contrary to the known Practice of all Ages until this day. The first he endeavours to prove; 1. Because *Bishops* are not ennobled as to Blood by the Writ of Summons; and that they are onely *Barons ratione tenuræ*, which he proves at large *pag.* 34. which if I mistake not will do him a disservice. 2. That being onely *Peers ratione tenuræ*, he

infers, that they are not *Peers* within the meaning of *Magna Charta*; for that the *Temporal Lords* have something more to lose, viz. the inheritable Nobility of their Blood: And upon this he smoothly Discourses of the weighty point of *Magna Charta*, and ingeniously gives his conception of the advantage of it; which, how true, or home to the point, shall in due time be debated. He there shews the disparity between a *Temporal* and a *Spiritual Lord*; and concludes, with a reflection upon the *Bishops*, not much to the reputation of his Modesty, or his tragical Declamation against *Scurrilous Language* in his *Preface*; and at last in Triumph, he throws down his *Gauntlet* and Challenges the whole Field, to shew any other advantage of being try'd *per legale judicium parium*, than what he has there laid down; which, in compliance to his loud defiance, shall be done. Thirdly, he endeavours to prove, that *Bishops* are not *Peers* to the Inheritable Nobility; because they are not in *Capital Cases* tryed by *Peers*; which if it will do his Cause any good, is freely granted without any more ado.

Then he goes on with a long *Harangue*, pag. 9, 10, 11, 12, 13. about *Privilegium Clericale*, or the Benefit of the Clergy, and runs the hazard of his own Censure of so many pages, being impertinent, and altogether Foreign to the *Question*. Pag. 14. He concludes with *Io triumphe!* That he has proved by the Rules of Law, Authority of the most renowned *Authors*, and variety of *Precedents*, That a *Bishop* is no *Peer*, in respect of a *Temporal Baron*, within the meaning of the 29th. Cap. of *Magna Charta*, and that it doth naturally follow, that *Bishops* have therefore no right to claim any *Jurisdiction*, or right of *Judicature* in *Capital Cases*, wherein the *Temporal Barons* are concerned.

From thence he proceeds to his second *Proposition*, That the *Bishops* Voting in *Capital Cases*, is contrary to the known practice of all *Ages* untill this day; which he endeavours to prove from the Constitution of *Clarendon*; where he says their *Jurisdiction* was expressly limited in these words, *quousque perveniat ad diminutionem membrorum vel ad mortem*, to loss of Life or Limb; which he further endeavours to prove and corroborate from a Constitution at *Westminster*, mentioned by *Hovenden*, in which it was ordained, That no *Clergy-man* should *Agitare Judicium Sanguinis*, Sit as Judge in matters of Blood. This he further endeavours to confirm from the protestation of the Clergy 2. R. 2. in these words, *Sicut de jure non debemus, nec possumus nec volumus*, &c. Then he goes on to *Precedents* of Judgments given in *Capital Cases* by the *Temporal Lords*, only come Judges du *Parliament*; producing several, and among the rest, that ingrateful one of the *Earl of Strafford*, pag. 16, 17, 18. Pag. 22. is spent in a long nothing to the purposed Discourse about the *Papal* incroachments, and inching upon our *Ancestors*. Pag. 23. He endeavours to prove the *Canon* incorporated into our *Common Law*, as to *Capital Matters*. Pag. 24. He Answers the Objection from the *Bishops* Protest. 2 R. 2. which seems to suppose a Right; truly affirming, that if they had no right before, that could give them none, and that their consent at large to all *Laws* made in their Absence was invalid, giving a pretty hint, that their consent is not necessary in *Legislation*, and concludes the Paragraph with a levelling reflection of *Coordinate Power*, and that the *Lords Spiritual* are not one of the three *Estates* in *Parliament*; which if they be not, the *King* must come in, to supply the vacant room of the third *Estate*, and then farewell *Sovereignty* and *Supremacy*. Pag. 26. He examines the Case of the *Proxies* made by the *Bishops*, at the Instance of the *Commons* in *Parliament*, 21. R. 2. and flurs it off as a strange unaccountable thing; and at the last comes to this peremptory Conclusion; That without a new *Act of Parliament* the *Bishops* could have no right to vote in *Capital Cases*, to which he generously intimates, how compliant he will be when it comes, being well assured, from the temper of the then *House of Commons*, that it would be *ad Græci Calendas*, or *Queen Elizabeth's* later *Lammas*.

So that upon a Survey of his Discourse, the Nerves of his Arguments seem to consist in this, That *Bishops* are not *Peers*, in respect of *Temporal Barons*, within the true intent of the 29. of *Magna Charta*: For that the true meaning, and all the advantage of that Grant of being Tried *per legale judicium parium suorum*, consists in this, that he who is a competent Judge of the Life and Death of another, ought to be so *par* in all circumstances, that he may be supposable to come under the very same circumstances with the *Prisoner* whom he is to Judge, which will induce him

to act with Caution, Tenderneſs, and Juſtice; from whence he infers, that *Biſhops* being out of the poſſibility of being in the ſame circumſtances with *Temporal Barons*, viz. inheritable Nobility of Blood, and by conſequence not *pares*, their *Peers* in that circumſtance, cannot be competent Judges of *Temporal Lords* in *Capital Caſes*.

And ſecondly, That this being the true meaning of the *Magna Charta*, the Practice of all *Ages* has been grounded upon it, and according to it.

Now ſince he has put himſelf upon this *Iſſue*, viz. the Truth or Fallhood of theſe two *Poſitions*, I will endeavour to ſhew how groſſly he has miſtaken in his Foundation; and that therefore the *Airy Cupelo* which he has, with ſuch pomp and gilding raiſed upon it, cannot ſtand. I ſhall treat him like the *Eagle in the Fable*, and ſeather my Shafts out of his own Wing; if he be wounded by them he may ſigh, but ought not to complain, or permit his anger to range further than himſelf who gave the occaſion.

That I may do this with *order*, brevity, and perſpicuity, I muſt endeavour to prove theſe things in oppoſition to his *Theſis*. Firſt, that he has not truly hit the intent and meaning of *Cap. 29. of Magna Charta*, and that the advantage of being tried *per legale judicium parium*, does not conſiſt in that Parity of Circumſtances which he ſo confidently affirms it does, and challenges the moſt violent Maintainers of this pretended *Temporally-Spiritual Jurisdiction*, to give a rational account, wherein the advantage of a man's being tried by his *Peers* does conſiſt.

Secondly, that it is not contrary to the Privilege of the Freemen of *England*, or any Infringment of the 29th. of *Magna Charta*, for *Peers* to be tried by thoſe who are not in all Circumſtances their *Peers*, and particularly not as to Inheritable Blood, and by conſequence that *Plea* can be no Bar to the Claim of the *Lords Spiritual*.

Thirdly, that he has miſtaken his *Precedents*, which do not come up at all to the point, and prove onely that the *Lords Temporal* are Judges du *Parliament*, according to the Statute of *Clarendon*, when it comes to the *Definitive Sentence*, but that *Biſhops* may and ought, *debeant intereſſe*, &c. to be preſent and vote, *quonſque perveniatur ad dimiſſionem membrorum, vel ad mortem*; till it comes to loſs of Life or Limb, which is not till the paſſing of Sentence upon the *Prisoner*.

If I prove theſe ſufficiently, as I hope to do from the *Author's* own Conceſſions, *Precedents*, and due *Illations* from him, I hope he will excuſe me in the laſt place, if by ſome ſhort *Animadverſions* I endeavour to ſhew, that his Bowl runs with a wrong Bias, which is the reaſon that he has miſ'd his Ground; and ſo I ſhall leave it to the Judgment of the unprejudic'd *Reader*, if any ſuch there be, to determine which of us comes neareſt that *truth* which I hope we both contend for, though both cannot have.

That the *Reader* may be the better able to judge whether he has rightly explained the intent and meaning of the 29th. *Cap. of Magna Charta*, and to ſhew that the onely advantage intended us by being tried by the Judgment of *Peers*, does not conſiſt in this circumſtantial Parity, which is the firſt thing I undertake to prove againſt him, give me leave to give the *Engliſh*, as he has done the *Latin*, of the 29th. *Cap. of Magna Charta*, as I find it in *Pulton* and *Keeble's* Statutes at large: for I write this to *Engliſhmen*, and to all the Ranks of the Freemen of *England*, that they may underſtand their own Privileges, and that they may be made ſenſible that the *Biſhops* do not by this Claim go about to diſfranchiſe any Freeman of *England* of the leaſt tittle of the *Magna Charta*, as ſome of their Clamorous *Enemies* endeavour to perſuade the *Populacy*; and that what they do or have done in this particular, is onely to maintain their own rights as Freeborn *Engliſhmen*, and one of the three greateſt *Eſtates of the Realm*, without invading that of others; which I dare confidently aver, they are as tender of as of their own.

The 29th. Cap. of Magna Charta.

No Freeman ſhall be taken or impriſoned, or diſſeized of his Freehold or Liberties, or Free Cuſtoms, or be outlawed or exiled, or any other ways deſtroyed; nor We will not paſs upon him, or condemn him, but by the lawful Judgment of his Peers, or by the Law of the Land. We will ſell to no man. We will not deny or deſer to any man Juſtice or Right.

This *Great Charter*, which as many men talk of as do of *Robin Hood*, who never shot in his Bow, was a mutual Stipulation, or Ratification of a former Stipulation, between *Henry the Third* on his part, for himself, his Heirs and Successors for ever; and the *Bishops* and other *Clergy*, the *Nobility* and *Barons* on the other part, for themselves and the *Freemen of England*, their Heirs and Successors for ever: That this should be an *eternal Boundary* between the *Prince* and his *Liege People*, and stand inviolable as a Confirmation of the Privileges of the Subjects of *England*. And that whereas former *Kings* from the time of *William the Conqueror*, looking upon *England* as a conquered Kingdom, had exercised a *Tyranic*, *Arbitrary*, and absolute *Despotic* Power over the Subjects, as to *Life*, *Limb*, *Liberty*, and *Estate*; for the future it was accorded, that all Proceedings between the *King* and his *Liege People* should be according to *Justice*, *Equity*, and *Right*, the *Common Laws* of the *Land*, in order to the *Peace* and *Prosperity* of the *Nation*.

Among other stipulations, this 29th *Cap.* is a Grant from the *King* to all *Free-men*, That they should not be *Ousted* of *Lands*, *Tenements*, *Lives*, *Limbs*, or *Liberties*; but by due process of *Law*, and the Judgment of their *Peers*, as the *Gentleman* well observes from the Statute *de Proditoribus*, *Gens de leur Condition*, persons of the same rank and quality with themselves. *We*, says the *King*, *will not pass upon him, nor condemn him, but by the Lawful Judgment of his Peers.*

It is indeed, as the *Author* says, a point worthy of Consideration, wherein the advantage of a *Mans* being tryed by his *Peers* lyes; which he conceives to be this, when those who are to be a *Mans* Judges, may be under the very same circumstances with the Prisoner, and when the Prisoner can lose nothing by their Judgment, but what his Judges being under his circumstances may lose also. It is indeed a very ingenious conception; only the thread is too fine spun, to bear so great a weight, as is all the advantage which the *Free-men of England* derive from this 29th Article of *Magna Charta* of Tryal by their *Peers*.

If I may be permitted, I will also venture to conceive, and bring forth something more substantial as to the point, and advantageous in the Priviledge of being tryed by *Peers*; and that is, that by virtue of this Stipulation, or Priviledge, all the *Free-men of England* are secured of *Liberty and Property*, against *Arbitrary Power*, which some of the *Predecessors of H. 3.* did not only challenge, but exercise over the Subjects; and, I think this is a far more substantial advantage of being tryed by a *Mans Peers*, than that of a *Mans Peers* being under the possibility of the Prisoners circumstances; for hereby it is provided, *First*, That the *Right* of the Subject should not be crushed by the unlimited might of the *Prince*; and that he should not *pro arbitrio*, dispossess them of their *Freedom*, *Lives*, and *Liberties*. And *Secondly*, That every rank of men being judged by the *Gens de leur condition*, that is, by those who were reputed their *Peers*, not in the strictest nicety of Circumstances, but in the Eye of the *Law*; there might be no opportunity for the great *Lords* to oppress the *Commons*, as they who came in with the *Conqueror*, as well as the *Kings*, were frequently used to do; nor for the *Commons* out of *Envy* or *Malice* to retaliate upon the *Lords*; if they came to Sit in Judgment upon them. And this I think in a few words is sufficient to shew, that he is mistaken, as to the advantage of the Priviledge of being tryed by a *Mans Peers*: And for a further clearing of the Point, I shall in the following particulars prove from himself, that the *Law* made an Estimate of *Peerage* from a general equality and parity, without so much as thinking of such niceties of Circumstances as he fancies it consists in, and which, if split into so many hairs as it is possible it may, will at last render the Priviledge wholly impracticable, and frustrate the Foundation of *Law* and *Parliaments*, which is *Right and Justice*.

Since therefore the *Gentleman* has, like the *Frog* in *Aesop*, attempted to swell this thin and speculative *Phantome*, to the bulk of an *Elephant*, and upon the back of his own imaginary *Creature*, has planted a *Castle*, out of which he combats the *Peerage* of the *Lords Spiritual*; and it being his *Herculean Thesis*, That in regard, according to his conception of the Priviledge of *Peerage*, no *Bishop* can be a *Peer* to a *Lord Temporal* in the circumstance of inheritable Nobility, and by consequence, cannot lose that which the other may, and therefore is no competent Judge in the Trial of such *Temporal Barons*, I will endeavour to shew him and others his mistake, by proving my second *Antithesis*; viz.

That

That it is not contrary to the privilege of the Free-men of England, or any infringement of the true intent and meaning of the *Magna Charta*, for Peers to be tried by those who are not in all circumstances their Peers; and particularly as to the inheritable Quality of Blood, and that therefore by rational consequence *Bishops* are not by the meaning of the 29th. of *Magna Charta* debarred from a Right to vote in *Capital Cases*.

The Gentleman has well and truly observed and proved, that the King's Writ of *Summons* does not ennoble the Person summoned to serve as a Peer in Parliament, by many undeniable Reasons and *Precedents*, and particularly by that famous and well known Instance of Sir Thomas Camoys, Son to Sir Ralph Camoys, and Grandchild to Sir Ralph Camoys; so that the Record might well say *quampures Antecessores sui Banneretti fuerint*; he has proved that these *Bannerets* sat in the House of Lords as Peers of the Realm. Thus in the Roll 18 Ed. 3. n. 35. were present the King and divers Lords, & autres Barones & Bannerets. And in many of the *Parliament Rolls*, as 46 E. 3. n. 7. Dukes, Earls, Barons, and Bannerets; and many times Prelates, Earls, Barons, and other Grantees. And that the Barones minores, as well as Bannerets, in regard they had not this Circumstance of inheritable Nobility, as the Barones majores had, by Creation and Investiture of Robes, &c. were therefore *ad libitum* summoned or left out; and when they were summoned, in the Roll, after the Counts and Barons, they went by the Title of Bannerets, & autres Grantees, & Nobles, he has taken great pains most learnedly to prove, and has done it most effectually, and I heartily thank him for it; for he has saved me a task, I must otherwise have had to search the *Rolls*, *Journals*, and *Records*. Taking this therefore for granted and indisputable Truth, that these Bannerets, Barones minores, Grantees, & autres Nobles, were not inheritable Lords, and by consequence not Peers, (according to his Position, for want of that Circumstance, within the meaning of *Magna Charta*) to those Lords who were so by Creation and Investiture of Robes: if I can prove, that notwithstanding this, they sat and gave Judgment in *Capital Cases* with the Counts and Barons, come Judges du Parlement, I think I have gained my point; and that this deficiency in Circumstance is no Bar against the Claim of such, as in the eye of the Law are Peers de Royaum; but that they have a right as such to vote in *capital Cases* in the Tryals of inheritable Barons; it being a Maxim, that they who may do the greater, may do the less; and if such may give Judgment, *a fortiori*, they may vote in such cases till it comes up to Sentence and Judgment.

I find therefore that to further my Design, and that truth may prevail, the Gentleman our Author has elaborately proved, that several of these Grantees, & autres Nobles, have in several Parliaments sat in Judgment in *capital cases* upon the inheritable Nobility; and that this Circumstance was judged no incapacity or infringement of the Privilege or Advantage of *Peerage*, according to the 29th. of *Magna Charta*; nor will he (I think) be able to rub off this, as an Error in the most Honourable House of Lords, as he does the Petition of the House of Commons, 21 R. 2. with being a very strange and unaccountable oversight, unless he shall mean it of himself.

Thus my Author informs me pag. 15. Anno 4 E. 3. In the Parliament at Winchester, Die Luna post festum Sancti Georgii, the Earl of Kent, a Peer of Noble and Inheritable Blood and Honour, was brought before the Counts, Barons, & autres Grantees & Nobles en mesme le Parlement, &c. for Treason. Dors. Claus. n. 38.

Anno eodem in the Parliament at Westminster, post festum Sancte Katharina, Mortimer Earl of March, was impeached of Treason by several Articles; and the King charged les Counts & Barons, les Peers de son Royaum, to give judgment, and accordingly it was given per les dits Counts & Barons, les Peers de Royaum, come Judges du Parlement.

Ibid. The King commanded les dits Counts et Barons, Peers, &c. to give Judgment upon Simon de Bereford.

Ibid. The King commanded the same against several others, and accordingly, John Matravers, and four others, were all judged in that Parliament for Treason. Now adds our Author, the Prelates could not be comprehended in these general words, Les autres Grantees et Nobles, for two Reasons: 1. Because they are never spoken of in any Record, but either by the name of Archiepiscopi, Episcopi, &c. or Prelati; or some such name to distinguish them from the Laity. 2. If they be spoken of, they

are always first named. Now from hence I infer, that if these same *Autres Grantees et Nobles*, who sate Judicially upon these inheritable *Lords*, were neither *Prelates*, *Counts*, nor *Barons*, they must be the *Barones minores*; *Bannerets*, the *Kings Judges*, *Serjeants*, or *Council*, for no other were in any age known to be summoned, or set in *Parliament* among the *Peers*.

This being therefore clear and indubitable, that the *Writ of Summons* did not enoble these *autres Grantees et Nobles*, and that their Honour and *Peerage* was not inheritable, but *ad libitum*; it must necessarily follow,

Either first, That these *Noblemen* had hard measure, to be tryed contrary to the true intent and meaning of the 29th. of *Magna Charta*, and the only advantage of tryal by *Peers*: Since, according to our *Author's Maxim*, these *Grantees et autres Nobles*, wanting this Inheritable Honour, were no more *Gens de leur Condition* than honest substantial *Free-holders*; and they might expect as much *Justice* from them.

Or Secondly, it follows, That this *sence* which he has put so much stress upon, is not the true and ancient *sence* of the 29th. of *Magna Charta*, and the advantage of Tryal by *Peers*; but that a *Peer ad libitum*, much more than a *Peer ratione tenura*, is a competent Judge of another *Peer*, who has that circumstance of inheritable *Peerage*, which the other wants.

Or, Thirdly; That the *King's Writ of Summons*, directed to such as were only *Barones minores*, or as the *Modus tenendi Parliamentum*, styles them *Barons Peers*, though it did not enoble them or their posterity *de futuro*, yet did both enoble and enable them *de presenti*, to sit as *Peers de Royaum*, and to give Judgement with the *Counts and Barons*.

Now let him chuse which of these he shall like best; they are all natural inferences from his own *Book*; and yet they will equally ruin his delicate airy *Position*, of the advantage of *Parity*, consisting, as he would have it, in such a *temperamentum ad pondus* of Circumstances, as is almost impossible to expect.

For, if he shall assert the First, That these were *illegal procedures* against those *Noble Lords*, as being contrary to the intent of *Magna Charta*, and the advantage of *Peerage*, he ruins his own *Precedents*: For no *illegal proceeding* can ever prove a good *Precedent*, or warrant future actions; and then, notwithstanding all he says there, his *Precedents*, by which he endeavours to prove his assertion, will be of no value; and the *Lords Spiritual* may have a *Right to vote in Capital Cases*, notwithstanding they are not mentioned, or voluntarily departed from such *Parliaments*, which, as he would make us believe, did so apparently violate the *Magna Charta*, by Judging *Noble Lords*, by those who were not their *Peers*, having no Inheritable *Peerage* or Nobility to lose as the *Prisoners* had.

But it is both more modest and probable, that these Tryals happening not much above a hundred Years after the ratifying of the *Magna Charta*, by *Henry 3.* the *House of Peers* must needs have reason to understand the true meaning and advantage of the 29th. *Cap.* and the *Prisoners*, who were to lose their Lives, Estates real and personal, their Nobility, and the Inheritable Quality of their Blood, and the *House of Peers* a Member for ever, would some of them have happily hit upon this *Discovery*, and have moved an *arrest*, if not *reversal* of Judgment upon so great an *Error*; as, if we believe this *Gentleman*, amounts to no less than the subversion of the very Fundamental *Privilege of Peerage*, and ruins all the advantage of the *Free-men of England*, in a point so worthy of Consideration.

'Tis a Favour which the most Honourable House of *Lords* ever grant to any of their *Members* when impeached, that they assign them *Council*, learned in the Laws, to assist them in point of Law, to answer to the *Articles* of their Impeachment; and it is strange beyond all belief, that none of them should hit this Fault, and instruct the *Prisoners* upon so great a violation of their *Peerage*, either to make Challenge against these *autres Grantees et Nobles*, as incompetent Judges, before their Tryals, or to petition for a *Reversal* of the Sentence afterwards, by assigning this Fundamental mistake as sufficient matter of *Error*; but it was their ill *Destiny* to come to their Tryals before our *Author* was born!

And 'tis yet more strange, that the whole *House of Lords* should be so careful of their

their own concern, knowing it not impossible, but that they, or their *Posterity* might at one time or another come to be under the same circumstances with the *Prisoners*, should permit such a dangerous infringement of the *Magna Charta*, as to suffer those who were not *Peers*, within the true meaning and intent of that branch of the 29th. *Cap.* to sit in Judgment upon the *Members* of their House; which they could not but foresee might be drawn into *Precedent*, so much to their disadvantage in after-times, that they might come to be judged by *Common Juries*, who, if all this *Gentleman* avers be true, are as much their *Peers*, as those who cannot be under their circumstances, having no Blood to corrupt, nor any inheritable *Nobility* to lose; which was the exact Case of these *autres Grands et Nobles*, who did not sit *de jure* in the House of *Lords*, but only *ad Libitum*, when the *King* was pleased to call them by his *Writ of Summons*.

From hence therefore I infer, that since the abovesaid Judgments in *Parliament* were always affirmed to be good, and given by competent Judges, *per les dits Counts et Barons, Peers et autres Grands et Nobles, come Judges du Parliament*;

First, That our *Author's* Commentary upon the 29th. *Cap.* of *Magna Charta* is by several adjudged Cases and *Precedents* of his own, false and frivolous; and that the advantage of Tryal by *Peers*, does not consist in the exact proportion of Circumstances of Inheritable Honour or *Nobility*, but in a defence against *Arbitrary* and *Illegal Process*; and fixing every man in his property and *Freehold*, till by the Judgment of such as the *Common Law* took to be his *Peers*, he should be found guilty of Crimes which should render them liable to *Forfeiture*; and so by their Judgment, his *freehold*, &c. should *escheat* to the *King*, or those claimant under him.

Secondly, I infer, that the *Common Law* of *England* has anciently reputed those *Barones minores, Bannerets, et autres Grands et Nobles*, though no *Barons* by *Creation*, or *Investiture of Robes*; yet upon *Summons* directed to them *Peers de Royaume*, *Peers of the Realm* *à vice*, for that time, to all intents and purposes within the meaning of the 29th. of *Magna Charta*.

Thirdly, that therefore the *Lords Spiritual* being much more *Peers of the Realm* than these *Barones minores, &c.* could ever pretend to, as being, 1. *Barones ratione tenuræ*, which the others were not. 2. Always *de jure* summoned by *Writ* to sit in *Parliament*, and not *ad libitum* as the others were, they must of necessity be *Peers* to all intents and purposes within the meaning of the 29th. of *Magna Charta*, and in a good humour I find our *Author* confessing as much himself; For *jure* (says he pag. 8.) it was not without ground that so grave and judicious an *Author* as *Cambden* should say, That the *Lords Spiritual* enjoy all the Privileges that *Temporal Lords* do, saving onely the business of Tryal by *Peers*. I am loth to put the *Gentleman* to the blush with a *Non putaram*; but why was Mr. *Cambden* alleaged with the fair encomium of a grave and judicious *Author*, if what he says be not true? And if Mr. *Cambden*, so great an *Herald*, so great and famous an *Antiquary*, who made it his business to search into these matters, and had such opportunities as never man had, the public *Archives*, and the favour of all the *Private Libraries* of *England*, so grave and so judicious an *Author* say true, then all the *Gentleman* has laid before that citation, and after too against the *Peerage of Bishops* is false: For, if the *Spiritual Lords* have all the Privileges of the *Temporal Lords*, then are they *Peers* within the meaning of the *Magna Charta*, and have a right to *Vote in Capital Cases*; for I make account, these are some of the Privileges of the *Temporal Lords*; and if the *Spiritual Lords* enjoy All in common with them, except being themselves Tryed by *Peers*, then sure these of *Sitting and Voting in Capital Cases* among the rest.

So that you see nothing can be more evident from the Pains our *Author* has taken for us, than that he is mistaken in the very Fundamental point of his Book: And that his meaning is not the meaning of the 29th. of *Magna Charta*, nor the advantage he talks of, the sole advantage of being Tryed *per legale Judicium parum*; But that notwithstanding what he has said, the *Lords Spiritual* may have a Right to Sit, and *Vote in Capital Cases*, without the least infringement of the *Magna Charta*.

But because in our Age we do nothing, unless we cry out of breaches of *Privilege*, and infringements of the *Magna Charta*, and clamour against *Bishops*, as if Heaven and Earth were by their means to be reduced to their Ancient Chaos. I will beg the

favour of this *Gentleman*, that I may shew him how improvable this new invention of his, is to ruin the *Magna Charta*, and the Peace of the *Nation*, for which at first that *Grant* was made; and to which it has so constantly contributed, so long, as by virtue of it, the *Lords Spiritual* held and enjoyed the Rank of *Peers*; and that after they were by a *Faction* laid aside, the *Magna Charta* and all our Freedoms went to wrack: The *Temporal Lords* were Voted useles and dangerous, and strip'd of their Fundamental and Ancient Rights of being the *Supreme Judicature of the Nation*, and the *King* himself lost his *Crown and Life*, by the process of such as were no more his *Peers* than *Tinkers and Coblers*; according to the prophetick *Maxim* of *King James*, *No Bishop, No King*.

There is nothing that contributes to the Peace of our *Nation* more effectually then such *Laws and Provisions* as are made for the safety and security of the *Life, Dignity, and Power of the Sacred Person*, who wears the *Imperial Crown of these Realms*, and therefore our *Laws* punish all such, of what Rank or *Quality* soever, as are found guilty of the *Crimen Lesa Majestatis*, that compass or imagine death or destruction, &c. 25 E. 3. 5. c. 2. 13 Car. 2. 1. to the *King*, with the utmost severity, loss of *Life, Estate, Honour, Reputation*, and whatever is comfortable in this world: and yet so tender is our *Law*, that every man have justice and right done him, that even in the *Case of High Treason* he shall be tried by his *Peers*. Hopes of Impunity is certainly the greatest encouragement to the most horrid *Crimes*: Now has our *Author* taken great and learned pains, by finding out the true meaning and advantage of the *Magna Charta*, to indemnifie some persons from any *Trial for High Treason*; for no Freeman shall be tried but by his *Peers*. Now every ones *Peerage* (says he pag. 4.) ought to be measured and proportioned according to the limits and extent of that *Ratione cujus* he is a *Peer*. From whence I infer, that the *Ratione cujus* of the *Peerage* of the *Princes of the Blood*, being their Descent from the *Blood Royal*, and their *Inheritable Quality* to the *Imperial Crown*, those *Barons and Peers* who are not of the *Blood Royal* cannot be their *Peers* according to his meaning; and therefore are incompetent *Judges* in their case. And the reason is plain, for they can never be in the circumstances of the *Prisoner*, and having not the *Inheritable Right* to a *Crown* to lose, are not *Gens de leur condition*, or qualified to be their *Peers*.

So that according to his Exposition, if the *Princes of the Blood* should attempt the *Crown* before their time, as several in several Ages have done, here's an *Indemnity* ready for them, both as to *Life, Liberty, Estate, &c.* For no Freeman by the *Magna Charta* shall be tried for, or lose any of these, but by the lawful judgment of his *Peers*; and such no *Temporal Lords*, who are not of the *Blood* (according to him) can be: so that if there be not *Princes of the Blood* enough to try them, they are like to be untried and unpunished. Of what ill consequences this may be, and how conducive to the undoing of the *Magna Charta*, the Peace and Prosperity of the *Nation* in future Ages, if it were as generally believed, as it is confidently offer'd for truth, I leave to himself to judge, when the *Favor of his Blood against Bishops* is a little over, and that he begins to think coolly upon it.

But to manifest the error of his Foundation, the *Counts, Barons, and Peers*, who were not of the *Blood*, have so often sat judicially upon *Princes of the Blood* in capital cases, and condemned them too, that it is manifest the known *Law* of the Land believes them *Peers* to the *Princes of the Blood*, and so far *Gens de leur condition*, as to sit judicially upon them, without infringing the *Magna Charta*, or the advantage of *Peerage*. And by the just execution of the *Laws* have that way secured the *Lives* of our *Sovereigns* against any such as durst — *ante diem* — *inquirere in annos*, and grasp at a *Crown* before their turn.

What I infer from hence is by the Rule of Proportions: For as is a *Temporal Lord* who is not of the *Blood*, in respect of one who is, so is a *Bishop* in respect of a *Temporal Lord*; but any *Peer of the Realm*, notwithstanding he can never be in the circumstances of a *Prince of the Blood*, yet in the eye of our *Law* is a competent *Judge* within the meaning of *Magna Charta*, in capital cases, of such a *Prince of the Blood*. Therefore by parity of Reason so is a *Bishop* in respect of a *Temporal Lord*, notwithstanding he can never be in his circumstances as to *Inheritable Barony*, which I think is not so great a disproportion as *Inheritable Royalty*.

If I were near our *Author*, and he would permit me that familiarly I would whisper softly something in his ear, which I fancy would not be very grateful to him, or some others for whom he pretends a great esteem: For if the *Barons and Peers* according to his measures are incompetent *Judges* of those in whose circumstances they can never be, then are they incompetent *Judges* as to all such persons, of all things contained in that 29th. *Cap. of Magna Charta*, as well as of *capital cases*. And if so, I am afraid some of his Friends will not thank him for such a *stabbing blow*, as while it cuts off the Claim of the *Bishops*, does at the same instant cut off all Pretensions of *Judgment* for want of Sufficiency of *Peerage* in a great case, to which the aforesaid Privilege of *Legale Judicium Parium* will extend. He knows my meaning, and I leave him to think on't; for it is a point worthy of his serious consideration, wherein the advantage of being tried by a man's *Peers* consists; which (as he says) is when the *Judges* may be in the same circumstances with the person to be judged, and that he can lose nothing but what they have also to lose: which when the *Peers of the Realm* have every one the next Reversion of a *Crown*, and are next *Heirs* to it, will be true, and not before. *Sed qua supra nos* —

Thus I think from his own Writings, Arguments, Reason, and *Precedents*, I have made good my second *Amibasis*, That it is not contrary to the Privilege of the *Free-men of England*, or any Infringment of the 29th. of *Magna Charta*, for *Peers* to be tried by those who are not in all circumstances their *Peers*, and particularly not as to the Inheritable Quality of Blood: and by the clear consequence, that his first *Position* is false, and that *Bishops* voting in *capital cases* is not contrary to the intent and meaning of *Magna Charta*.

Let us see now whether upon Examination he will succeed better upon his second *Position*, That it is contrary to the known Practice of all *Ages* until this day.

And in order to this let us examine the *Statute of Clarendon*, of which he pretends to make such considerable advantages, the Power of the *Lords Spiritual* being therein expressly limited; and (as he says) the succeeding Practice accordingly punctually observed. I am a great Lover of the *English Nation and Language*, and am of opinion, that if we hear this Statute speak *English*, if our *Grammar* and way of Construction be not altered, we shall have a very different sense from what the *Gentleman* makes it depose. The *Archbishops and Bishops* (says that Venerable Constitution) and all other persons holding of the King in capite, shall hold by the tenure of *Baronage*, &c. *Et sicut caeteri Barones debeant interesse Judicii Curie Regis cum Baronibus, quousque perveniat ad diminutionem membrorum vel ad mortem; And ought as other Barons to be present at the Judicial Proceedings of the King's Court with the Barons, till suchtime as it comes to loss of Limb or Life.* Can any thing be more plain *English*? 1. The *Archbishops and Bishops* are declared to hold of the King in capite by the Tenure of *Baronage*. 2. That they are of duty bound, and ought as the other *Barons*, interesse, to be personally present with the *Barons*, *Judicii Curie Regis*, in or at the *Judicial Proceedings* of the King's Court. 3. How far this their being present at *Judicial Proceedings* shall extend, quousque, &c. till it comes to loss of Life or Limb: Till what comes? Not till matters or cases of that nature come before that *high Court of Supreme Judicature*, but quousque perveniat, which is a certain Limitation in point of Time, and not of Cases, and answers directly to the Question how long time, till such time as Judgment or *Judicial Proceedings* comes to the period of loss of Life or Limb, that is, till Sentence come to be pronounced upon the *Criminal*.

This will appear more plain, if we consider when it is that the *Judicial Procedure* of that *high Court* comes to this Period, to which the Presence of the *Lords Spiritual* is limited by the Constitution of *Clarendon*; and so how far their interesse *Judicii cum Baronibus* in that Statute does extend. And therefore, 1. a bare Impeachment of *High Treason* does not come up to the point of the quousque; for an innocent man may be falsely accused, and if upon due Proof and Examination the Impeachment be not made good, he is acquitted, and then their interesse sicut caeteri Barones cum Baronibus is warrantable, because hitherto a bare Accusation does not forfeit either Life or Limb. 2. An Inquiry into the Circumstances or Matter of *Fact*, the Method or Form of Proceedings, Examination of Witnesses, &c. concerning the Truth of the Impeachment, does not reach the point of the quousque; for, yet Life and Limb are safe, because (as before) there is a possibility of Acquittal, and the Law does not wittingly or willingly touch one hair of the head of an innocent man; much less his Life or Limb. 3. The question put *Guilty or Not*

Not Guilty, does not reach the time of the *limitation*: For if the *Majority* of the *Barons* are not satisfied in their *Consciences*, that the evidence is full and clear as to the *Guilt*, the *Vote* may pass in the *Negative*, and *Not Guilty* secures both *Life* and *Limb* from danger. *Fourthly*, The carrying the *Question Guilty*, or *Not Guilty*, in the *Affirmative*, does not come up to the time in the *limitation*, nor does at all touch *Life*, or *Limb*: for that is only *Declaratory* of the sence of the *House*, that they believe the *Matter of Fact* in the *Charge*; or *impeachment* to be true, and therefore, if it proceeds no farther than a *Vote* of the *House*, that the *Prisoner* is *Guilty*; he shall thereby lose neither *Life*, *Limb*, nor *Estate*; and therefore yet the *judicial proceeding* is not arrived at the *Quousque*. And thus far I humbly conceive the *interesse Judicis*, &c. of the *Lords Spiritual* does by virtue of the *Statute of Clarendon* extend. But *Fifthly*, when that *Supreme Court of Judicature* does *secundum allegata & probata* upon the carrying the *Question Guilty*, or *Not Guilty* in the *Affirmative*, proceed to a definitive *Sentence* against the *Prisoner*, that deserving those punishments of loss of *Life*, or *Limb*, for such *Crimes* as have been fully and clearly proved upon him at his *Trial*; therefore according to the *Laws* of the *Land* in such *Cases* made and provided, the *Prisoner* is condemned and adjudged to suffer and undergo such pains and penalties; then and not till then, is the *Judicial proceeding* or *Judgment* said to touch *Life*, or *Limb*. For after *Sentence*, however *Execution* may be respited, yet in the *Eye of the Law*, a *Prisoner* condemned to *Dye*, is a *Dead Man*; and it is *Sentence* that properly is said to touch either *Life*, or *Limb*; for till that be passed, they are safe and intire; but as soon as that is past, all is supposed to be *Executed* that is *Pronounced*, because in *Justice* it might.

I cannot conceive how our *Author* will reconcile the *Comment* he puts upon this ancient *Text* with either *Sence*, or *Grammar*; when *Pag. 18.* he tells his *Reader*, that this *quousque perveniat ad diminutionem*, &c. is to be understood to comprehend all precedent and preliminary things, which do relate or tend *ad diminutionem membrorum*, &c. for by that exposition, they can have nothing at all to do in *Judicial proceedings*; and then the former words, which say expressly *sicut ceteri Barones debeant interesse cum Baronibus judicis Curia Regis*, that they ought to be present as the rest of the *Barons*, will exclude the *Temporal Lords* too, or else they must be superfluous and nonsense: For it will speak thus, the *Arch-Bishops* and *Bishops*, as well as the rest of the *Barons*, ought to be present with the rest of the *Barons* in *Judiciary proceedings* in the *King's Court*, till it comes to the loss of *Limb*, or *Life*; That is, says our *Author*, they ought not to meddle or make, or be present from the beginning to the ending, not so much as in any precedent or preliminary things, which tend or relate *ad diminutionem*, &c. and yet says the *Statute*, they ought to be present *Sicut ceteri Barones*. So that by this way of arguing, while he would only lighten the *House* of the *Spiritual Lords*, he will, by virtue of the *Sicut ceteri barones, & cum baronibus*, heave the *Temporal Lords* over board also. I cannot tell whether *Logic* be as disgusting to him as *drollery*; but for once, it looks like that over officious *Servant*, who going to lift a *Gentleman* into the *Saddle*, threw him quite over the *Horse*. Had it been an exception as to some whole *Cases*, and not a limitation as to a certain point or period of time, till which time be expired, they may and ought to be present as the rest are, it would certainly have come in with a *Proviso Semper*, or *exceptis Judiciis ubi agitur de diminutione*, &c. and I am confident, that all who understand *Grammar* must give it this natural construction.

The *Constitution of Westminster* makes it yet plainer, *Clergy-men* shall not *agitare Judicium Sanguinis*. I hope none will from hence argue, that no *Clergy-man* shall do any thing that is precedent or preliminary to *Tryals of Blood*; for he is bound, both by the *Laws of God* and *Man*, to detect and prosecute, or accuse any that he shall know guilty of *Treason*, *Murder*, &c. which are essentially preliminary to the *judicium sanguinis*; but he shall not *agitare Judicium* act as a *Judge*; Sit and condemn *Criminals*; and yet I do not believe that this *Canon* was universally received; for I find, that many of the *Clergy* have been *Lord Chief Justices of England*, and we must either suppose the *People* much better than they are now a days, or else they would find it difficult to avoid the breach of the *Canon, agitando Judicium sanguinis*.

And that this is the true intent and meaning of that *limitation* as to point of time in the

the *Statute of Clarendon*, and of sitting and acting as Judges, in the pronouncing *Sentence* in cases of Blood, prohibited by the Constitution of *Westminster*, I think our *Author* has gone a great way to prove, by those *precedents* which he produces to prove, that these *Constitutions* were punctually, as he says, observed in after Ages, though not all, by his favour. For all that they prove, is only this; That *Les Counts et Barons*, *les Grandees et autres Nobles Peers de Royaume*, acted and gave Judgment against and upon the *Prisoners*, come *Judges du Parlement*: And that they were the sole persons concerned in giving Judgment, and passing Sentence, is a Point, that no person living, that I know of, will dispute with him: But that the *Bishops*, the *Lords Spiritual*, according to the *debeant interesse*, of *Clarendon*, were not at all present *Judiciis Curie Regis*, till the time of the *Sentence* pronouncing, which was the thing he ought to have proved, is a *Negative*; which, as he well observes, *pag. 27. As it is rash to assert in a matter of Fact*, so it is to be presumed, he found too difficult to prove; otherwise, no doubt but he had undertaken it, and we had heard of it to some purpose. And yet, if he does not prove, as well as rashly assert this *Negative*, that the *Lords Spiritual* never were present in any *Judicial proceedings*, or *Voted in Capital Cases*, till it came up to *Sentence*, his *Second Position* will be as weak as his *First*; and it will no more appear, that their *Voting* in such *Cases* is contrary to the *Practice* of all *Ages* until this Day; then it does, that such *Voting* is contrary to the intent and meaning of *Magna Charta*.

Since therefore it appears by the *Statute of Clarendon* that *de jure* the *Lords Spiritual* ought *interesse Judiciis*, &c. *quousque perveniat*, till the *Sentence* be to be passed, and that his *precedents* prove no more, but that the *Temporal Lords* are sole *Judges of Parliament*, as to the pronouncing of *Sentence*. I think I have also made good my third *Antithesis*; That he has mistaken his *Precedents*, which do not at all come up to the point, or prove *de Facto*, that the *Lords Spiritual* did not sit, *Sicut ceteri Barones*, & *cum Baronibus*, *quousque*, &c. as *Barons*, with the rest of the *Barons*, till the Judgment came by *Sentence* to touch *Life or Limb*.

As for the *Protestation* of the *Clergy* 2. R. 2. and those words *Non intendimus nec volumus*, *Sicuti de jure non possumus, nec debemus*, I must give him a short answer of his own; That, as if they had no *Right* before, this *Protestation* could give them none; So if they had a *Right* before, as appears by the *Statute of Clarendon* they had, their disclaimer of it upon any account whatsoever cannot be pleaded in *Bar* against their *Successors*: For no private *Act* can be of force sufficient to invalidate so publick and Fundamental a *Constitution* as that of *Clarendon*, and yet the ground of their *Protestation*, *sicuti de jure non possumus*, is grounded upon the *Sacrorum Canonum instituta*, which is not at all obliging in our *Case*, for in *England*, even in those days, as he observes, *p. 22.* instead of being recieved, they were stoutly opposed, as derogating from the *Sovereignty* and *Prerogative* of the *King*, and tending to the detriment of the *Rights* and *Properties* of the *Subjects*: And yet in the next Page he would persuade us they were embodied into our *Common and Statute Law*; which *Contradiction* I leave him to reconcile, for it passes my *Understanding*.

As for the *Affirmative*; That the *Lords Spiritual* have *Voted* both by themselves and their *Proxies* in *Capital Cases*, I think the *Instances* given in the 7, and 8th. *Cap. of the Honours*, &c. are so plain, that he is forced to come off with, most of the *Records* that are cited are either when they made *Proxies*, or in *Bills of Attainder*. Now if any of them are in other *Cases*, as it is clear they were, then I suppose his *Position* must crave grains of allowance, and strike the *Flag*, which in triumph it bears aloft; That the *Bishops Voting* in *Capital Cases* is contrary to the known *Practice* of *All Ages*. And though he smooths over the matter of the *Commons Petition*, 21. R. 2. and cunningly calls a *King and Parliament*, all *Fools*, charging them with the guilt of *Heat*, and a *strange unaccountable oversight*, and *introducing of an Innovation*; yet as in honour to them, some persons are apt to presume, they knew as well what they did and said, as this *Gentleman*; so that this *Private Opinion* will not weigh in the *Scale*, against a *King and Parliament*, which till now has ever had a *Reverence* paid to them as the *United Justice and Wisdom of the Nation*.

I shall leave the farther prosecution of this affair, to the management of the hand that first undertook it; who doubtless is too sanguine to retreat without striking a blow.

What I have done, was only upon a *Cursory view*, and as a *Van-courier* to what I presume will follow: I thought it not amiss, to let the *Author* see, that he is not come to his *Io Paan*, *Io bis dicite Paan*: And that the World might not as it is customary, be persuaded, that all *Arguments* against *Bishops* are impregnable. I have also chosen to answer him by himself, as thinking I could not pick any stones more smooth, than those that I found in his own *Brook*; no *Sword* like that of the *Gyant*; nor any *Conviction* like one which comes *ex ore tuo*.

I have but one word more to add by way of *Animadversion*, to the *Reader*, to take notice of what *Principles* the *Gentlemen* is. For though the Voice be *Jacobs*, the Hands are *Esaus*. The four reflections which are cunningly scattered throughout the whole *Discourse*, are strong arguments that the *Author* is a bitter Enemy to *Episcopacy*, which he cannot be, and a Friend to *Monarchy*, or the present Government, as it is now by Law Established both in Church and State. I will give you a taste of his four Grapes, which once set our Teeth on Edge before.

Thus pag. 1. he puts it as a *Quere*, whether such an Institution were good and reasonable or not; and pag. 5. he gives the *Bishops* a most undervaluing reflection. Upon what grounds, lays he, can more Justice be expected from them, than from honest substantial Freeholders? He might have considered their Honour, as *Peers of the Realm*, by the Statute of *Clarendon*, which he so much magnifies. Their learning and great abilities; their eminent Piety and Integrity; and the constant Loyalty (if that be not a crime) of most of the present *Bishops* to the King and Government, even in the worst of times; their sufferings with and for his late, and present Majesty; their great Prudence and Moderation, with which they have acted since His Majesties happy Restauration: Which if he had, upon second thoughts, it is to be presumed, that he might have been induced to believe, that something more may be expected from such persons as are qualified to sit as *Barons* in the great Council of England, the Parliament, and some of them in His Majesties most Honourable Privy Council, than from honest substantial Freeholders, who, I fear, are not so well capacitated for the discharge of such Honourable Employments, tho never so honest or substantial. It is a shrewd temptation to retaliate upon him: But I shall leave him to the correction of his own Reason, if he be not Mortar proof; and that Divine Rule, which teaches him not to speak Evil of Dignities, and despise Dominions, which I am sure by the *Magna Charta*, and the known Laws of the Land, the Reverend Prelates are.

Pag. 6, 7. He brings in several precedents, that Bishops are not tryed by Peers, rather wantonly to expose and vilifie the Clergy, than to advantage his Cause; and bids, observe the humility, obedience and Loyalty of our Spiritual Fathers in those days. I know no body that will deny, that Bishops shall not be tryed by Peers; they have the more reason to complain then, that they only should be excluded from the benefit of the 29th. of *Magna Charta*, since they are known *Barons and Peers of the Realm*. But among all his List of Clergy Malefactors I cannot give any reason, why he should bring in that holy and renowned Martyr Archbishop *Cranmer*, tried and found guilty of High Treason, unless he has a mind secretly to bespatter Protestant Religion in the Cradle and Infancy of the Reformation, and to furnish the *Papists* with something to reproach us, besides *Harry the Eighth's* Cod-piece.

Pag. 9, 10, 11, 12, 13. are spent about *Privilegium Clericale*, to no purpose for his Cause, but onely as they give vent for his Gall, and serve as he thinks to vilifie the Clergy, by shewing there were ill men and Villains of that Profession. I know not what he is of, but let it be what it will, I will undertake to shew him an hundred for one, let him chuse where he will. All that he can make of it will amount to no more, than that among 12 Disciples there was one Devil and Traitor; and if there were then men in holy Orders, or are now, who were or are a Scandal to Religion, they are no more allow'd by the Bishops than Judas was by Christ; and though it be the constant method of some persons *paucorum crimen diffundere in omnes*, to throw the dirt of a few in the faces of all in Holy Orders; yet it is neither Christian nor safe, for at the same rate the Reflexion will rebound to him, who is the great Bishop of Souls.

Pag. 18, 19. is the most invidious Suggestion in the world; as if the Spiritual Lords were the very Damm of Justice: For lays he, Somewhat or other might happen to be put to the vote in their presence, &c. upon which the whole business might depend, and by the voices

voices of the Spiritual Lords that vote, it might pass against the major part of the Temporal Lords; and so the whole business lost, and the expectation of Justice frustrated. It is a very smooth way of calling all the Spiritual Lords *KN AVES* and *FOOL S*. What have they neither *Honour* nor *Honesty*; neither Mother-Wit Learning, Knowledge, nor *Conscience*, but that they must *point blank* run against the current of *Justice*? Good Sir, think on't again, and revoke your rash and unadvised Censure, or otherwise I must inform you, that among sober men, who know the *Bishops* better than you do, your *Book* will pass for a dangerous and infamous *Libel* against, at least one of the greatest *Estates* of the *Realm*, and you will be thought to aim at *root and branch* at the long run of your design.

And indeed the Gentleman like a sharp *Haggard* makes several *Baits* at that old *Quarry*, which was once flown so home, *viz.* the Abolishment of *Episcopal Jurisdiction*, as *pag. 1.* whether their Institution be good and reasonable, which with a profound Obedience having onely put them in mind of it, he leaves to the consideration of the *Parliament*; and as if the King were a Party unconcerned, either included in the word *Parliament*, or totally to be left out as a *Cypher*, according to the *old mode*, he tells us in the Determination of the *Parliament* every good Subject ought to acquiesce. I hope he does not mean without the *King's* too, or that the *King* and *Parliament* are all one. And *pag. 25.* he comes in with an *If it be as they say, that the Clergy is one of the three Estates of Parliament*: But *pag. 26.* he comes full swoop, and takes them in the foot, endeavouring to prove, that their *Assent* is not at all necessary to *Legislation*, telling us that their *Legislation* is every whit as ample as their Power of *Judicature*; when in 25 Pages before he pretends not onely to prove, but demonstrate from *Magna Charta*, and the Practice of all *Ages*, that they neither have nor ought to have any right or power of *Judicature*; and that no more Justice is to be expected from them, than from honest substantial *Freeholders*: Forgetting that *Queen Elizabeth* (of Famous Memory) by *Act of Parliament* calls them positively *One of the greatest Estates*; and he knows who are the other two, and who they were that first ousted the *Bishops*, and then the *Lords Temporal*, both from *Legislation* and all Power of *Judicature*, to the ruin of our Laws, Liberties, and Government.

He brings in *pag. 25.* the odious *Precedent* of the Noble *Earl of Strafford*, and the Procedures of that *Parliament* of 42, who sent some of the *Bishops* to the *Tower*, for entering their Protestation against the illegal Proceedings of that time; and seems to justify and applaud their doing so. It is well the *Precedent* is so fresh in memory, to remind people of the danger of popular, tumultuary, and disorderly Proceedings; nor is it any wonder that then the *Bishops* declined their *Suffrages*, when so many of the *Temporal Lords* did the same, for fear of the People. Which I hope shall not one day be brought in as a *Precedent* against their right too. *Baker's* Authority, that they did it according to the Provision of *Canon Law*, and the constant Practice to this day, I hope is *History*, but no *Record*; and he might either for shame have omitted those Proceedings, being so little to his purpose, as all irregular Proceedings are, or have told us a little more of the *History* and dismal Consequences of those *Precedents*; and how the popular Insolence by the instigation of the *Anti-Episcopal* Party ran so high, that the greatest part of the *Lords* came to the House by Water, and durst not come in their Coaches for fear of Affronts: how all such as were favourable to the *Lord Strafford*, 49 *Lords* and 63 *Commons*, were by name posted upon the Gate at *Westminster* with this Menace, *That all these, and all other Enemies of the Commonwealth should perish with Strafford*. How one in the *Mutiny* said openly, *If we have not the Lieutenant's Life, we will have the King's*, and how at last they had both. But not a word of this, or to signify his Detestation of those Horrid *Precedents*.

In the last place he has a Remark upon the *Bishops*; *If* (says he) *the Prelates in former times*, whom he had endeavoured to render as black as Ink can make them, *did give obedience to the Laws and Constitutions of the Nation, much more ought their Successors, whose Principle is strict Obedience to the Government of the Kingdom, and perfect Submission to the Higher Powers.* Who does he mean by those *Higher Powers*? For I have not heard, that either the *King* or major part of the *Lords*, whom I take to be the *Higher Powers*, have required any Submission or Obedience in the point; and when they do, he need not question but the *Bishops* will hold to their Principles in their Practice; and I wish
this

this Gentleman and all others, were as good and obedient Subjects as they have been, and will be. But the Consequence is, that if the present *Bishops* will not do as he would have them, then they are disobedient to the *Higher Powers*, and worse than the old *Popish Bishops*; and then you know what follows. But immediately after he subjoins, *God be thanked the Times are turned, we have reason to expect more Humility and Loyalty from our Spiritual Fathers, &c.* I also add, I wish he would (since the Times are turned) shew more Modesty and Duty towards his *Superiours and Spiritual Fathers*, than was shewed in the last Turn of the Times, when they were turned out of all, and which some People are suspicious is endeavouring to be done again. And so I leave him to consult his Pillow, and cool Thoughts and Considerations.

Upon the whole I leave it to the Consideration of the *Sober and Judicious*, whether this Gentleman's Performance be so good as the Promise of his Title; and whether his Conclusion be true, That there will need a new *Act of Parliament* to give the *Lords Spiritual* a right to vote in *Capital Cases*. And since it is neither contrary to the true intent and meaning of the 29th. of *Magna Charta*, nor to the known Practice of all Ages, whether the old Statute of *Clarendon*, which says positively, *debent interesse Judicis cum Baronibus Curia Regis, quousque perveniatur ad diminutionem membrorum, vel ad mortem*; That the *Barons or Lords Spiritual*, as the rest of the *Barons*, ought to be present with the other the *Temporal Barons* in the *King's Court*, untill such time as the Judicial Proceedings come to loss of Life or Limb; that is, till the pronouncing of *Sentence*, will not serve without any new *Act* to empower them to vote in capital cases? And if my Lord *Coke's Rule* hold good, which he quotes pag. 15. That no Statute loseth its force by Non user, Co. 1 Inst. 114. then by virtue of the Statute of *Clarendon*, which stands yet unrepealed, *Bishops* will be enabled both to claim and defend their Right of *Judicature* as well as *Legislation*, and that they ought to Vote in *Capital Cases*.

F I N I S.
